



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: O'Gara-Hess & Eisenhardt Armoring Company--
Reconsideration
File: B-232508.2
Date: September 29, 1988

DIGEST

Request for reconsideration is denied where protester raises no new factual or legal arguments which were not previously considered.

DECISION

O'Gara-Hess & Eisenhardt Armoring Company requests reconsideration of our September 9 notice dismissing its protest against the contract award to the Hess and Eisenhardt Company under request for proposals (RFP) No. USSS-88-19-P issued by the United States Secret Service for the supply of armored vehicles.

We deny the request for reconsideration.

As our dismissal notice indicated, we dismissed O'Gara-Hess' protest because it concerned: (1) an affirmative determination of responsibility, which is not reviewed by the General Accounting Office (GAO) absent a showing that contracting agency personnel may have acted in bad faith or that definitive responsibility criteria contained in the solicitation were not met; (2) the awardee's submission of an allegedly below cost offer, or "buy-in," which does not provide a legal basis to challenge an award and (3) the legal status of the awardee as a regular dealer or manufacturer under the Walsh-Healey Act, which is reviewed by the contracting agency, the Small Business Administration and the Department of Labor, not GAO.

Under our Bid Protest Regulations, 4 C.F.R. § 21.9(a) (1988), a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and must specify any errors of fact or law made in the decision or information not previously considered. Information not previously considered refers to information which was overlooked by our

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Office or information to which the protester did not have access when the initial protest was pending. Tritan Corp.--Reconsideration, B-216994.2, Feb. 4, 1985, 85-1 CPD ¶ 136.

In its request for reconsideration, O'Gara-Hess argues that our dismissal was in error because its protest did present "a showing that contracting agency personnel may have acted in bad faith or that definitive responsibility criteria contained in the solicitation were not met."

In order to show bad faith, a protester must submit evidence that the contracting agency directed its actions with the specific and malicious intent to injure the protester. American Management Co.--Request for Reconsideration, B-228280.2, Mar. 7, 1988, 88-1 CPD ¶ 242. The initial protest did not include such evidence. Moreover, the protester has not offered any new evidence to support this contention, but merely recites portions of its earlier protest and reiterates its earlier argument concerning what it perceives to be the contracting officer's failure to adequately investigate the awardee's status as a regular dealer or manufacturer under the Walsh-Healey Act. The protester, thus, does not raise any new factual or legal arguments in its request which would warrant reconsideration of this aspect of our dismissal.

Similarly, the initial protest did not demonstrate that the awardee failed to meet a definitive responsibility criterion set out in the solicitation. In fact, the protester cited Federal Acquisition Regulation § 9.104-1, which concerns general standards of responsibility, which we do not review in view of the large degree of business discretion afforded contracting officers in their application. The request for reconsideration presents no information which indicates that our dismissal in this regard was in error.

The protester also includes a separate letter^{1/} in which it claims it presents "further evidence" of the awardee's non-responsibility. The information concerns the size of the awardee's workforce and the status of the awardee's security clearance, both matters of responsibility. The protester also requests that an investigation be conducted to adequately determine the qualifications of the contractor.

Protesters that withhold or fail to submit all relevant information in their initial protest do so at their own peril, since it is not the function of this Office to investigate allegations raised in the protest record nor do we reconsider decisions on the basis of previously available information. Further, the protester does not indicate why it had not previously provided this information which it considers relevant to its protest. In addition, not only do these new contentions concern responsibility matters that we do not generally review, as noted above, they are not, in any event, timely raised within 10 days of August 24, the date the protester states that it was advised of the contract award. See 4 C.F.R. § 21.2(a)(2). We, therefore, have no basis upon which to reconsider our dismissal.

The request is denied.

for Seymour Efron
James F. Hinchman
General Counsel

^{1/} This separate letter from O'Gara-Hess was written pursuant to a letter from the agency, inappropriately sent to the protester, soliciting comments from "interested parties." Such a letter soliciting comments on the protest is meant not for the protester, but for "the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied." See 4 C.F.R. § 21.3. The Secret Service's advice to interested parties to submit their comments by September 19, on which date we received the protester's submissions, cannot extend the deadline for filing a timely protest under our Bid Protest Regulations.